Supreme Court of the United States

October Term, 1953

No. 727

KATHERINE SHELLHAMMER, General Administratrix of the Estate of Walter R. Shellhammer, deceased,

Petitioner,

vs.

LEHIGH VALLEY RAILROAD COMPANY, a corporation,

Respondent.

PETITIONER'S REPLY BRIEF

Respondent's brief discusses the merits of the case, rather than the principle of law sought to be reviewed.

The crux of respondent's position is that the evidence lends greater support to inferences of freedom of fault, rather than negligence. Such argument is beside the point.

The three cases upon which respondent relies are not persuasive. They all treat with situations where the uncontradicted evidence conclusively established the railroad's freedom of fault.

1. *Brady, Admx.* v. *Southern Railway Co.*, 320 U. S. 476 (Dec., 1943), pages 13 and 14 of respondent's brief. The Court held the events were too remote to question the only reasonable conclusion;—that the railroad was free from any negligence. There was no issue of fact.

2. *Moore, Admx.* v. *Chesapeake & Ohio Railway Co.*, 340 U. S. 573 (February 26, 1951), aff'g 184 Fed. (2d) 176

(August 10, 1950), pages 13, 14, 15 and 16 of respondent's brief. The uncontradicted evidence showed that the decedent fell before the train stopped, hence, the sudden stopping of the train could not possibly have been the cause of the accident. There was no issue of fact.

3. *Eckenrode* v. *Pennsylvania R. Co.*, 164 Fed. (2d) 996 (C. C. A. 3rd, Dec., 1947), aff'd 335 U. S. 329, 330 (November, 1948), pages 17, 18, 19 and 20 of respondent's brief. The decedent was killed solely as a result of his own fault, in acting in an unreasonable fashion and placing himself in a place of danger. There was no substantial dispute as to the manner of the happening of the accident.

Petitioner takes no issue with the principles laid down in the other cases cited by respondent.

At page 11 of respondent's brief, reference is made to Rule 26, the so-called "Blue Flag Rule", a rule to obviate injury to men working trains.

The legal presumption of due care for one's self, as well as the testimony that Gumhold and Helmstetter had been doing work at the cars connecting air hoses, D 42A-15, would support the inference that the blue signal had been properly placed.

The respondent was in a position to investigate the manner of the happening of the accident at the time of its occurrence. It was in a position to inquire as to the reason for the train starting for Oak Island with Shellhammer being absent from the caboose. Furthermore, respondent was in a position to ascertain what happened to Shellhammer's second work glove, the wrench as well as the aforementioned blue signal or lamp.

May we humbly submit that interpretation of existing law should be consistent with the rapid advancement of modern civilization. That to interpret law now in the manner applicable to horse and buggy times, would be tanta-

mount to the mortmain of obsolete, petrified, *stare decisis*, placing justice in a legal strait jacket.

Realistically, employees do not have the freedom of action to give full and complete testimony against their employers, as they are ever confronted with the danger of economic reprisal.

An experienced superintendent of railroad car inspectors does not have his head cut off by the wheels of a train, unless somebody is negligent.

The presumption of due care being in decedent's favor, the railroad in such instance should be required to go forward with the evidence, particularly, where the circumstantial evidence justified a reasonable inference of breach of duty and other fault.

Respectfully submitted,

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of Counsel.